
**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

DALE JUNIOR KEEL,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. 2:08 cv 0784 TS

REPORT AND RECOMMENDATION

Judge Ted Stewart

Magistrate Judge Brooke C. Wells

On February 9, 2009, Defendant filed a motion to dismiss this action based upon Federal Rule 12(b)(1).¹ Defendant argues Plaintiff failed to exhaust his administrative remedies and therefore, this case should be dismissed because the court lacks subject matter jurisdiction. After the time for a response had passed, the court entered an order to show cause directing Plaintiff to respond to Defendant's motion.² On March 23, 2009, Plaintiff filed a response.³ Plaintiff states: "Plaintiff Dale Junior Keel hereby stipulates that this appeal was filed prematurely before he had exhausted his administrative remedies. Plaintiff acknowledges that the Appeals Council must have an opportunity to consider his written exceptions before this Court has jurisdiction to

¹ Docket no. 9.

² Docket no. 10.

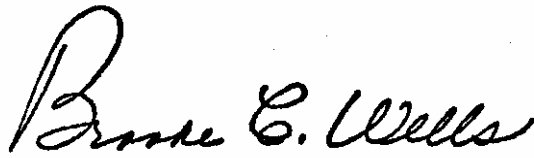
³ Docket no. 11.

consider his claim.”⁴

Based upon Plaintiff’s acknowledgement that he failed to exhaust his administrative remedies, and for those reasons outlined in Defendant’s motion to dismiss, the court hereby RECOMMENDS that Defendant’s motion be GRANTED and that this action be DISMISSED.

The Court notifies the parties of their right to object to the foregoing Report and Recommendation. Parties must file any objections within 10 days of receiving the Report and Recommendation. Failure to object may constitute a waiver of objections upon subsequent review.

DATED this 24th day of March, 2009.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter 'B' is large and loops around. The signature is positioned above a horizontal line.

Brooke C. Wells
United States Magistrate Judge

⁴ Pla.’s stipulation to dismiss p. 1.